

Remarks

On July 13, 2006, the Examiner issued a final office action finally rejecting claims 1-37. In the response filed November 1, 2006, Applicant proposed canceling claims 1-10, 12-19, 21-26, 28-33, 35, and 36 and placing dependent claims 11 and 27 in independent form. The scope of the remaining claims was not changed. Nonetheless, the Examiner issued an Advisory Action January 19, 2007 stating that the response filed November 1, 2006 raised new issues. Applicant filed a notice of appeal on January 16, 2007.

Applicant then filed an appeal brief on March 9, 2007. In the appeal brief, Applicant argued the final rejection of claims 11, 17, 18, 20, 24, 26, 27, 34, and 37. Applicant, in the Summary of Claimed Subject Matter section of the appeal brief, summarized claims 11, 17, 24, 26, and 27 (claims 18, 20, 34, and 37 were not summarized as they depend from claims 11 and 27), but did not summarize independent claims 1, 9, and 22. In the Arguments section of the appeal brief, Applicant argued the rejection of claims 11, 17, 18, 20, 24, 26, 27, 34, and 37, but did not argue claims 1-10, 12-16, 19, 21-23, 25, 28-33, 35, and 36.

On April 30, 2007, a first Notice of Non-Compliant Appeal Brief was issued. The Notice stated that the appeal brief was defective because the "claimed invention is not mapped to independent claims 1, 9 and 22, which shall refer to the specification by page and line number and to the drawings, if any."

While not agreeing with the Notice, Applicant filed a response to the first Notice of Non-Compliant Appeal Brief on May 29, 2007 summarizing independent claims 1, 9, and 22 pursuant to M.P.E.P. § 1205.03 (b).

On January 23, 2008, a second Notice of Non-Compliant Appeal Brief was issued. The second Notice stated that "Applicant has not addressed any arguments for any of the independent claims; See MPEP 1205.03 [R-3]."

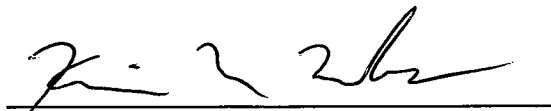
On March 5, 2008, Applicant's undersigned representative, Keith M. Tackett left a voicemail for SPE Carl Whitehead, Jr. regarding the second Notice asking him to call back to discuss the second Notice. To date, no call has been received from SPE Whitehead, Jr.

Applicant's undersigned representative, Keith M. Tackett, spoke with the Honorable Dale M. Shaw at the Board of Patent Appeals and Interferences on March 11, 2008 regarding the requirements for appeal briefs. Judge Shaw stated that he reviewed both appeal briefs filed by Applicant and that both appeal briefs are compliant although he prefers the appeal brief filed March 9, 2007. Specifically, Judge Shaw stated that Applicant is not required to appeal the independent claims, but rather, may appeal and argue dependent claims. Additionally, Judge Shaw noted that the Summary of Claimed Subject Matter section of the appeal brief preferably maps the broadest claims appealed and not the broader independent claims. Judge Shaw agreed there is no requirement to appeal and argue the independent claims and there is no requirement for the Summary of Claimed Subject Matter section of the appeal brief to map the independent claims that are not appealed.

On March 12, 2008, Applicant's undersigned attorney, Keith M. Tackett, spoke with Examiner Monica D. Harrison regarding the situation and described the statements made by Judge Shaw. Examiner Harrison stated that she would review the situation and call back the following week. To date, no response from Examiner Harrison has been received.

Therefore, in light of Judge Shaw's review of the appeal briefs, Applicant respectfully requests both the Notice of Non-Compliant Appeal Brief mailed April 30, 2007 and the Notice of Non-Compliant Appeal Brief mailed January 23, 2008 be withdrawn, and that this appeal proceed with the appeal brief filed on March 9, 2007. Applicant further requests a refund of all fees paid as a result of the improper Notices of Non-Compliant Appeal Briefs.

Respectfully submitted,



Keith M. Tackett
Registration No. 32,008
Patterson & Sheridan, L.L.P.
3040 Post Oak Blvd., Suite 1500
Houston, TX 77056
Telephone: (713) 623-4844
Facsimile: (713) 623-4846
Attorney for Applicant